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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.39 of 2003
and
Crl.M.P.No.313 of 2003

M/s.The Gounder and Company Auto Ltd.,
rep by its Power of Attorney holder
Mr.K.Mylswamy,
No.90, Dr.Nanjappa Road,
Coimbatore.641018. .. Revision Petitioner (Third Party)

Vs.

Mrs.Sara Stally .. Respondent/Complainant

Prayer: This Criminal Revision filed under Section 397 R/W Section 401 of Cr.P.C has been preferred against the order dated 13.12.2002 in Crl.M.P.No.7765 of 2002 in C.C.No.455 of 2000 on the file of the Judicial Magistrate No.V, Coimbatore.

For Appellant : Mr.E.Omprakash

ORDER

This Revision has been preferred against the order passed in Crl.M.P.No.7765 of 2002 in C.C.No.455 of 2000 on the file of the Judicial Magistrate No.V, Coimbatore. The said Crl.M.P.No.7765 of 2002 was filed under Section 305 of Cr.P.C., with a prayer to give necessary direction to the complainant to strike off the nomenclature of Gounder and Company (A4) and replace in its place 'Gounder and Company Auto Ltd.,' represented by power of attorney holder Mr.K.Mylswamy.

2. The complainant-Sara Stally, Proprietrix of Super Lorry Transport, D.No.39, Kamakshiamman Koil Street, Gobichettipalayam, had filed the private complaint against the accused for an offence under Section 420, 409, 465, 467 and 471 IPC. In the complaint the complainant would state that she had purchased a Tata Lorry (LPT 2213/56) for Rs.5,46,814/- from A4 and A5 under invoice No.7395 dated 20.4.1995, having chasis No.380 010 CUQ 7 10029 and engine No. 697 222 CUQ 7 26302 and took delivery of the lorry from A4 and A5 at Coimbatore, after paying the full invoice value.

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The Registration number of the lorry is AP 13 T.7621. The complainant had purchased another lorry (model Tata LPT 2213 56) for Rs.5,15,081/- under invoice No.1731 dated 14.7.1995 and the said vehicle was purchased under hire purchase agreement with M/s.Overseas Sanmar Financiers Ltd., Ranga Pillai Street, Pondicherry. The vehicle was to be registered at Hyderabad and delivery was effected by A4 and A5 at Pondicherry. This lorry was kept in idle as the registration was yet to be done and national permit was also to be obtained. Due to sheer efflux of time the lorry developed some minor repairs and require servicing also and to carry out minor repairs and for servicing the lorry was entrused with A1 along with A4's driver one Mr.Bose on 17.11.2006 and the other vehicle also had developed the same complaint and hence the same was also entrusted for servicing with one Mr.Sadiq, the driver of A4 on 15.1.1997. The entry of the aforesaid lorry into the premisses of A4 on 15.1.1997 was also been recorded in Log Book. The complainant went to the office of A4 to take delivery of the vehicle in the year 1997, but she found both the vehicles were missing from the custody of A4. When the complainant approached A4 for return of vehicle or its value on several occasion ended in futile. Under such circumstances only she had preferred the said complaint. But in the said complaint A4 was described as Gounder & Co., represented by Mr.Balasubramaniam, Managing Partner, Ukkadam, 51.A Palghat road, Coimbatore.1.

3. The private complaint was taken on file and when the private complaint reached the stage of trial, A4/revision petitioner herein along with A5 had filed Crl.O.P.No.18714/2000 before this Court for quashing the proceedings in C.C.No.455/2000 (page 25 of the typed set of papers). A1 also filed a similar petition under Crl.O.P.No.24770 of 2000 against Ms.Sara Stally, A2-Kannan, A3-Vijayalakshmi, A4-M/s.Gounder and Co. and N.Balasubramaniam-A5. As per the order of this Court both the Criminal Original Petitions were heard together and a common order was passed by this Court on 07.08.2000. The Crl.O.P.No.18714/2000 filed by A4 & A5 was dismissed as against A4 but the same was allowed in respect of A5. Crl.O.P.N.24770 of 2000 filed by A1 was also dismissed. In the mean time A4-Gounder & Co, in the name of M/s.Gounder & Company Auto Ltd., filed an application under C.M.P.No.7765/2002 in C.C.No.455 of 2000 under Section 305 of Cr.P.C., with a prayer as indicated above. The said application was dismissed by the learned trial judge. Hence this revision.

4. Now the point for determination in this revision is whether the prayer of the revision petitioner to substitute and to array him as A4 after striking out M/s.Gounder & Co., as originally stated in the complaint is permissible?

5.The Point:- From the original complaint preferred under Section 200 of Cr.P.C., it is seen that all the transaction in respect of the purchase of lorry by the complainant was only with A4, M/s.Gounder & Co.,. Now the revision petitioner would contend that the M/s.Gounder and Company Auto Ltd., has been registered on 23.5.2002 ie., subsequent to the filding

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of C.C.No.455 of 2000 ie., after the amalgamation of the two companies viz. Gounder & Co., and Goundr and Company Auto Ltd., on 23.5.2002. The learned counsel for the revision petitioner would contend that the revision petitioner M/s.Gounder and Company Auto Ltd., will shoulder all the responsibilities of M/s.Gounder & Co., and M/s.Gounder and Company Auto Ltd., prepares to meet whatever liability which is to be decided againt it in C.C.No.455 of 2000, the revision petitioner is prepared to abide by it. But in the affidavit filed by the revision petitioner in C.M.P.No.7765 of 2002 in C.C.No.455 of 2000, there is no specific undertaking given in the above lines. On the date of filing of the private complaint, the complainant has cause of action only against M/s.Gounder & Co., and not against the present revision petitioner M/s.Gounder and Company Auto Ltd.,. Under such circumstances, I do not find any reason to interfere with the orders of the trial Judge in C.M.P.No.7765 of 2002 in C.C.No.455 of 2000 on the file of the Judicial Magistrate No.V, Coimbatore. Point is answered accordingly.

6. In the result, the revision is dismissed confirming the orders passed in C.M.P.No.7765 of 2002 in C.C.No.455 of 2000 on the file of the Judicial Magistrate No.V, Coimbatore. Connected Crl.M.P.No.313 of 2003 is closed. At this juncture the learned counsel for the revision petitioner would contend that if the revision petitioner is permitted to file another application under Section 305 of Cr.P.C., then he will incorporate an undertaking as required under law. Under such circumstances, if the revision petitioner files a fresh application under Section 305 of Cr.P.C., with necessary undertaking to take all responsibilities of M/s.Gounder & Co., then the trial Court can consider the same on merit.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To

1.The Judicial Magistrate No.V, Coimbatore.
2.-Do-thro' The Chief Judicial Magistrate, Coimbatore.

2 cc To M/S.Ramalingam, Advocate, SR.20448.

Crl.R.C.No.39 of 2003

VC(CO)
RVL 09.04.2007

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